In the
Supreme Court of Ohio

PRETERM-CLEVELAND, ET AL.,	:	Case No. 2023-0004
	:	
Appellees,	:	On Appeal from the
	:	Hamilton County
v.	:	Court of Appeals,
	:	First Appellate District
DAVE YOST, ATTORNEY GENERAL	:	
OF OHIO, ET AL.,	:	Court of Appeals
	:	Case No. C-220504
Appellants.		

MERIT BRIEF OF MISSISSIPPI, ALABAMA, ARKANSAS, FLORIDA, GEORGIA, IDAHO, INDIANA, IOWA, KENTUCKY, MISSOURI, LOUISIANA, MONTANA, NEBRASKA, SOUTH CAROLINA, SOUTH DAKOTA, TEXAS, UTAH, AND WEST VIRGINIA AS AMICI CURIAE IN SUPPORT OF APPELLANTS

ALAN E. SCHOENFELD
MICHELLE NICOLE DIAMOND
PETER NEIMAN
Wilmer Cutler Pickering Hale
and Dorr LLP
7 World Trade Center
New York, NY 10007
212-230-8800
alan.schoenfeld@wilmerhale.com
michelle.diamond@wilmerhale.com
peter.neiman@wilmerhale.com

DAVINA PUJARI
CHRISTOPHER A. RHEINHEIMER
Wilmer Cutler Pickering Hale
and Dorr LLP
One Front Street
San Francisco, CA 94111
davina.pujari@wilmerhale.com
chris.rheinheimer@wilmerhale.com

LYNN FITCH
Attorney General of Mississippi

SCOTT G. STEWART (PHV-26769-2023)*
Solicitor General
Counsel of Record
JUSTIN L. MATHENY (PHV-26768-2023)*
Deputy Solicitor General
Mississippi Attorney General's Office
P.O. Box 220
Jackson, MS 39205
(t) 601-359-3680
(f) 601-359-2003
justin.matheny@ago.ms.gov

Counsel for Amici Curiae States

*pro hac vice motions pending

ALLYSON SLATER
Wilmer Cutler Pickering Hale
and Dorr LLP
60 State Street
Boston, MA 02109
allyson.slater@wilmerhale.com

B. JESSIE HILL
FREDA J. LEVENSON
REBECCA KENDIS
ACLU of Ohio Foundation
4506 Chester Ave.
Cleveland, OH 44103
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu

MEAGAN BURROWS
American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY, 10004
mburrows@aclu.org

MELISSA COHEN
Planned Parenthood Federation
of America
123 William Street, Floor 9
New York, NY 10038
Melissa.cohen@ppfa.org

Counsel for Plaintiffs-Appellees
Preterm-Cleveland, et al.

MATTHEW T. FITZSIMMONS
KELLI K. PERK
Assistant Prosecuting Attorney
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
mfitzsimmons@
prosecutor.cuyahogacounty.us
kperk@
prosecutor.cuyahogacounty.us

Counsel for Defendant-Appellee
Michael C. O'Malley,
Cuyahoga County Prosecutor

MELISSA A. POWERS
Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202

Defendant-Appellee

JEANINE A. HUMMER
AMY L. HIERS
Assistant Prosecuting Attorneys,
373 S. High Street, 14th Floor
Columbus, OH 43215
jhummer@franklincountyohio.gov
ahiers@franklincountyohio.gov

Counsel for Defendant-Appellee
G. Gary Tyack,
Franklin County Prosecutor

DAVE YOST
Ohio Attorney General

BENJAMIN M. FLOWERS
Solicitor General
STEPHEN P. CARNEY
MATHURA J. SRIDHARAN
Deputy Solicitors General
AMANDA L. NAROG
ANDREW D. MCCARTNEY
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980; 614-466-5087 fax
benjamin.flowers@ohioago.gov
stephen.carney@ohioago.gov
mathura.sridharan@ohioago.gov
amanda.narog@ohioago.gov
andrew.mccartney@ohioago.gov

Counsel for Defendants-Appellants
Attorney General Dave Yost, Director
Bruce Vanderhoff, Kim Rothermel, and
Bruce Saferin

WARD C. BARRENTINE
Assistant Prosecuting Attorney
301 West Third Street
PO Box 972
Dayton, OH 45422
wardb@mcohio.org

Counsel for Defendant-Appellee
Mat Heck, Jr.,
Montgomery County Prosecutor

JOHN A. BORELL
KEVIN A. PITUCH
EVY M. JARRETT
Assistant Prosecuting Attorney
Lucas County Courthouse, Suite 250
Toledo, OH 43624
jaborell@co.lucas.oh.us
kpituch@co.lucas.oh.us
ejarrett@co.lucas.oh.us

Counsel for Defendant-Appellee
Julia R. Bates,
Lucas County Prosecutor

MARVIN D. EVANS
Attorney for Summit County Prosecutor
Assistant Prosecuting Attorney
53 University Ave., 7th Floor
Akron, OH 44308-1680
mevans@prosecutor.summitoh.net

Counsel for Defendant-Appellee
Sherri Bevan Walsh,
Summit County Prosecutor

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

INTRODUCTION AND STATEMENT OF AMICUS INTEREST

For nearly 50 years, the U.S. Supreme Court maintained that the U.S. Constitution protects a right to abortion. *See Roe v. Wade*, 410 U.S. 113 (1973). Last year, that Court held that that was wrong, had inflicted significant damage, and had to be overruled. *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2284 (2022). The Court recognized that *Roe* did not just get the U.S. Constitution wrong but also "distort[ed]" "important" legal rules in "many" areas unrelated to abortion. *Id.* at 2275. In the years under *Roe*, Justice after Justice "lamented" the Court's "ad hoc nullification" of neutral rules of law—an approach the Court reliably took in order to invalidate "regulation[s] of abortion." *Ibid.* In abortion cases the Court cast aside ordinary principles of statutory interpretation, the standard for evaluating facial constitutional challenges, severability principles, the traditional treatment of factbound prior decisions, the limitations on appellate review of legislative findings, rules governing prospective injunctive relief, principles of res judicata, and more. The Court in *Dobbs* counted this decades-long distortion of basic legal rules as a strong reason to overrule *Roe* and set the law right. *Id.* at 2275-76.

But as abortion disputes have, after *Dobbs*, returned to the States, state courts have been urged to continue distorting the law to protect abortion. This Court is urged to do so in this case.

Amici curiae are the States of Mississippi, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, and West Virginia. Over the years, amici have litigated many legal issues in abortion cases. Amici have

extensive experience defending neutral rules of law in those cases and have seen the harms inflicted by refusing to apply the same legal rules to all litigants in all cases. Amici's experience extends to one of the issues now before this Court: whether abortion providers have third-party standing to vindicate a right to abortion. The U.S. Supreme Court long accorded abortion providers such standing. That was a mistake. It departed from sound principles of standing, damaged the law, and hurt the Court. There is no good reason for this Court to engraft those problems onto Ohio law and to bring that harm to this State's courts. This brief explains these points and encourages this Court to hold that abortion providers lack third-party standing to challenge laws regulating or restricting abortions, like the Heartbeat Act challenged here.

STATEMENT OF THE CASE AND FACTS

In 2019, Ohio enacted the Heartbeat Act. The Act requires any "person who intends to perform or induce an abortion" to "determine whether there is a detectable fetal heartbeat." R.C. 2919.192(A). The Act prohibits "knowingly and purposefully perform[ing] or induc[ing] an abortion on a pregnant woman" after detecting a fetal heartbeat. R.C. 2919.195(A). Those provisions do not apply when an abortion provider determines in good faith that compliance would pose a "serious risk of the substantial and irreversible impairment of a major bodily function." R.C. 2919.195(B); R.C. 2919.16(F); 2919.16(K).

In 2022, the plaintiffs—several abortion providers—filed this suit, claiming that the Heartbeat Act violates the Ohio Constitution. The trial court preliminary enjoined much of the Act. It ruled that the plaintiffs possess third-party standing

to challenge the Act. Order Granting Preliminary Injunction, Oct. 12, 2022 ¶¶ 73-80. And it held that the Ohio Constitution protects a fundamental right to abortion (*id.* ¶¶ 84-96), that the Act infringes that right (*id.* ¶¶ 97-111), and that the Act also violates the Ohio Constitution's guarantee of equal protection (*id.* ¶¶ 112-23).

The State appealed, but the First District dismissed the appeal for lack of jurisdiction. *Preterm-Cleveland v. Yost*, 2022-Ohio-4540 (1st Dist.). It ruled that the preliminary injunction was not an order that could be immediately appealed.

The State then appealed to this Court, which accepted the case to review questions on appealability and third-party standing.

ARGUMENT

Amici States' Proposition of Law No. 1:

Abortion Providers Lack Third-Party Standing To Challenge The Heartbeat Act.

A. In the nearly 50 years under *Roe v. Wade*, 410 U.S. 113 (1973), federal abortion jurisprudence was at war with the basic demand that courts apply neutral principles of law. Federal abortion cases were pervaded by special rules that applied largely or only in the abortion context. The U.S. Supreme Court applied a special standard of scrutiny (the undue-burden standard) to abortion claims. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 876-78 (1992) (plurality opinion). The Court applied a special test for facial constitutional challenges (the large-fraction test). *Id.* at 895 (Court's opinion). And ordinary principles of statutory interpretation often fell "by the wayside" when the Court "confronted a statute regulating abortion." *Gonzales v. Carhart*, 550 U.S. 124, 153 (2007).

A little over a decade after *Roe* was decided, this distortion of the law was already clear: "The permissible scope of abortion regulation is not the only constitutional issue on which this Court is divided, but—except when it comes to abortion—the Court has generally refused to let such disagreements, however longstanding or deeply felt, prevent it from evenhandedly applying uncontroversial legal doctrines to cases that come before it." *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 814 (1986) (O'Connor, J., dissenting). From there it just got worse. In the following decades the Court cast aside many legal doctrines when doing so served to uphold a right to abortion. *E.g.*, *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582, 645-66 (2016) (Alito, J., dissenting) (res judicata); *id.* at 644-45 (severability); *June Medical Services L.L.C. v. Russo*, 140 S. Ct. 2103, 2171-73 (2020) (Gorsuch, J., dissenting) (judicial review of legislative factual findings); *id.* at 2176-78 (burden for prospective injunctive relief); *id.* at 2178-79 (judicial treatment of factbound prior decisions).

This feature of federal abortion jurisprudence was profoundly damaging. For decades, "no legal rule or doctrine [wa]s safe from ad hoc nullification by th[e] Court when an occasion for its application ar[ose] in a case involving state regulation of abortion." *Thornburgh*, 476 U.S. at 814 (O'Connor, J., dissenting). This contributed to a perception of the Court that did "damage to the Court's legitimacy." *Casey*, 505 U.S. at 869. After all, courts should not apply "the law of abortion." *Webster v. Reproductive Health Services*, 492 U.S. 490, 541 (1989) (Blackmun, J., concurring in part and dissenting in part). They should apply the law—in abortion

cases as in every other case. Yet for almost 50 years federal abortion jurisprudence repeatedly failed at that fundamental task.

The U.S. Supreme Court recognized this problem last year when it overruled *Roe*. Federal abortion jurisprudence, the Court emphasized, had "led to the distortion of many important but unrelated legal doctrines." *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228, 2275 (2022). The Court noted many of the special, abortion-only rules called out over the years in dissenting opinions. *See id.* at 2275-76. And it recognized that, by requiring courts to "engineer exceptions to longstanding background rules," federal abortion jurisprudence had failed to provide a "principled and intelligible" development of the law. *Id.* at 2276. The Court counted this as a strong reason to overrule its abortion cases. *See id.* at 2275-76.

B. One legal doctrine long distorted by federal abortion jurisprudence was legal standing. In federal court, a "plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." *Warth v. Seldin*, 422 U.S. 490, 499 (1975). A narrow exception applies when "the party asserting the right has a 'close' relationship with the person who possesses the right" and "there is a 'hindrance' to the possessor's ability to protect his own interests." *Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). When those requirements are met, that party is accorded third-party standing—standing to sue to vindicate a non-party's rights.

For years, the U.S. Supreme Court accorded abortion providers third-party standing to assert the abortion rights of women to challenge abortion regulations and restrictions. A four-Justice plurality endorsed this use of third-party standing

in *Singleton v. Wulff*, 428 U.S. 106, 113-18 (1976). Without seriously revisiting whether that view was sound, the Court for decades allowed abortion providers to maintain such lawsuits. As with other departures from neutral rules of law in abortion cases, dissenting Justices faulted this practice and recognized that it was irreconcilable with the requirements of third-party standing. *E.g.*, *June Medical*, 140 S. Ct. at 2167-69 (Alito, J., dissenting); *id.* at 2173-74 (Gorsuch, J., dissenting); *Whole Woman's Health*, 579 U.S. at 629-33 (Thomas, J., dissenting).

On this issue, too, the Court eventually recognized that it had gone astray. "The Court's abortion cases," *Dobbs* declared, "have ignored the Court's third-party standing doctrine." 142 S. Ct. at 2275. Refusing to continue "engineer[ing]" an "exception[ ]" to a "longstanding background rule[ ]," *id.* at 2276, the Court went on to reject its past abortion cases, *id.* at 2284.

C. This Court is now called upon to decide whether to accord abortion providers third-party standing to challenge restrictions on abortion, like those in the Heartbeat Act, based on women's claimed right to abortion. The trial court ruled that abortion providers have such standing. This Court should reject that view.

Sound principles of standing preclude abortion providers from suing to vindicate a right to abortion. Like federal law, Ohio law allows third-party standing only if the plaintiff "possesses a sufficiently 'close' relationship with the person who possesses the right" and "shows some 'hindrance' that stands in the way of the [rights holder] seeking relief" herself. *City of East Liverpool v. Columbiana County Budget Commission*, 114 Ohio St. 3d 133, 2007-Ohio-3759 ¶ 22 (internal quotation

marks omitted). Abortion providers cannot meet either requirement for a challenge to abortion restrictions like those in the Heartbeat Act.

First, the abortion providers here have not shown—and abortion providers generally cannot show—a "close relationship" with the women whose rights they seek to assert. Abortion providers often do not even know these women. They commonly seek to sue on behalf of unknown women who may in the future come to them seeking abortions. And for the women that they do know, the women's relationship with abortion providers is usually "brief," shallow, and transactional: often just minutes long. *E.g.*, *June Medical*, 140 S. Ct. at 2168 (Alito, J., dissenting). The four-Justice plurality in *Singleton v. Wulff* imagined that "[t]he closeness of the relationship is patent." 428 U.S. at 117 (plurality opinion). That view is baseless. A physician's "aid" and involvement in an abortion (*ibid.*) does not mean that the relationship is a close one—and we know today that it generally is not. *See*, *e.g.*, *June Medical*, 140 S. Ct. at 2168 (Alito, J., dissenting). The relationship is nothing like a parent-child or guardian-ward relationship where "the plaintiff's interests are so aligned with those of a particular right-holder that the litigation will proceed in much the same way as if the right-holder herself were present." *Id.* at 2174 (Gorsuch, J., dissenting). Indeed, the interests of abortion providers and women may diverge. A provider has a financial motive that may not align with a woman's interests. *Cf. ibid.* (third-party standing is generally rejected when "the plaintiff has a potential conflict of interest with the person whose rights are at issue").

Second, there is no "hindrance" to women asserting the rights claimed here. Affected women have sued to vindicate a right to abortion many times. *See Whole*

Woman's Health, 579 U.S. at 631-32 & n.1 (Thomas, J., dissenting) (collecting examples). The *Singleton* plurality thought that a woman may be hindered from vindicating a right to abortion because of a desire to protect her privacy and because of the imminent mootness of her claim (since litigation generally extends longer than pregnancy). 428 U.S. at 117-18 (plurality opinion). But in its very next breaths that plurality recognized the basic flaws in its own reasoning. It acknowledged that women could (as they have done innumerable times, including in *Roe*) protect their privacy by suing under a pseudonym. *Id.* at 117. And it recognized that *Roe* itself held that litigating a right to abortion falls under the capable-of-repetition-yet-evading-review exception to mootness. *Ibid.* (citing *Roe*, 410 U.S. at 124-25). In the many years of according third-party standing to abortion providers, the U.S. Supreme Court never found a sound basis to believe that women would be hindered in asserting a right to abortion. There is none.

Given these blackletter points, this Court should reject the view that abortion providers have third-party standing to challenge the Heartbeat Act.

Holding otherwise would damage the law. Upholding the abortion providers' standing here would require distorting the law in service of a putative right to abortion. When courts "engineer exceptions to longstanding background rules," they depart from the principled application of neutral principles that is central to the rule of law. *Dobbs*, 142 S. Ct. at 2276. Federal abortion caselaw shows where this road leads. Nullifying ordinary rules of law made federal judicial decisions "so riddled with special exceptions for special rights" that those decisions "deliver[ed] neither predictability nor the promise of a judiciary bound by the rule of

law." *Whole Woman's Health*, 579 U.S. at 629 (Thomas, J., dissenting). When "governing legal standards are open to revision in every case," there are no governing legal standards. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 787 (1986) (White, J., dissenting).

According the providers third-party standing would also harm this Court. Neutral rules of law help keep courts in their "constitutionally assigned lane," ensuring that judges "are in the business of saying what the law is, not what [they] wish it to be." *June Medical*, 140 S. Ct. at 2171 (Gorsuch, J., dissenting). If this Court starts to adopt special, abortion-only rules—on third-party standing or otherwise—it will feed the view that "when it comes to abortion" this Court does not "evenhandedly apply[ ]" the law. *Thornburgh*, 476 U.S. at 814 (O'Connor, J., dissenting). Indeed, "[i]f anything, when a case involves a controversial issue," courts "should be especially careful to be scrupulously neutral in applying [workaday legal] rules." *Whole Woman's Health*, 579 U.S. at 644 (Alito, J., dissenting). When a court fails to adhere to neutral principles of law, particularly on hotly contested moral and political issues, it encourages the perception that the court is a political body. That is what happened to the U.S. Supreme Court under *Roe*. *Cf. Beal v. Doe*, 432 U.S. 438, 461 (1977) (Marshall, J., dissenting) ("The [Court's] abortion decisions are sound law and *undoubtedly good policy*.") (emphasis added). Nothing could be more damaging to a court than a jurisprudence that is at war with the demand to act based on neutral principles. *See Cameron v. EMW Women's Surgical Center, P.S.C.*, — S.W.3d —, 2023 WL 2033788, at *17 (Ky. Feb. 16, 2023) (rejecting third-party standing for abortion providers and emphasizing that holding otherwise

would "perpetuate" a "mistake" that the U.S. Supreme Court "openly acknowledged" to have made and would "deliver neither predictability nor the promise of a judiciary bound by law").

There is no good reason for this Court to engraft onto Ohio law the problems that long plagued federal law and federal courts in abortion cases. This Court should recognize as much by holding that abortion providers lack standing to challenge the Heartbeat Act based on a non-party's claimed right to abortion.

CONCLUSION

The Court should hold that the abortion-provider plaintiffs lack third-party standing to challenge the Heartbeat Act.

Respectfully submitted,

LYNN FITCH
Attorney General of Mississippi

SCOTT G. STEWART (PHV-26769-2023)
Solicitor General
Counsel of Record

/s/ Justin L. Matheny
JUSTIN L. MATHENY (PHV-26768-2023)
Deputy Solicitor General
Mississippi Attorney General's Office
P.O. Box 220
Jackson, MS 39205
(t) 601-359-3680
(f) 601-359-2003
justin.matheny@ago.ms.gov

Counsel for *Amici Curiae States*

Counsel for Additional Amici States

Steve Marshall
Attorney General
State of Alabama

Tim Griffin
Attorney General
State of Arkansas

Ashley Moody
Attorney General
State of Florida

Christopher M. Carr
Attorney General
State of Georgia

Raúl R. Labrador
Attorney General
State of Idaho

Theodore E. Rokita
Attorney General
State of Indiana

Brenna Bird
Attorney General
State of Iowa

Daniel Cameron
Attorney General
Commonwealth of Kentucky

Jeff Landry
Attorney General
State of Louisiana

Andrew Bailey
Attorney General
State of Missouri

Austin Knudsen
Attorney General
State of Montana

Michael T. Hilgers
Attorney General
State of Nebraska

Alan Wilson
Attorney General
State of South Carolina

Marty J. Jackley
Attorney General
State of South Dakota

Ken Paxton
Attorney General
State of Texas

Sean D. Reyes
Attorney General
State of Utah

Patrick Morrisey
Attorney General
State of West Virginia

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Merit Brief of the States of Mississippi, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, and West Virginia as Amici Curiae in Support of Appellants was served this 8th day of May, 2023, by e-mail on the following:

ALAN E. SCHOENFELD
MICHELLE NICOLE DIAMOND
PETER NEIMAN
Wilmer Cutler Pickering Hale
and Dorr LLP
7 World Trade Center
New York, NY 10007
212-230-8800
alan.schoenfeld@wilmerhale.com
michelle.diamond@wilmerhale.com
peter.neiman@wilmerhale.com

DAVINA PUJARI
CHRISTOPHER A. RHEINHEIMER
Wilmer Cutler Pickering Hale
and Dorr LLP
One Front Street
San Francisco, CA 94111
davina.pujari@wilmerhale.com
chris.rheinheimer@wilmerhale.com

JOHN A. BORELL
KEVIN A. PITUCH
EVY M. JARRETT
Assistant Prosecuting Attorney
Lucas County Courthouse, Suite 250
Toledo, OH 43624
jaborell@co.lucas.oh.us
kpituch@co.lucas.oh.us
ejarrett@co.lucas.oh.us

Counsel for Defendant-Appellee
Julia R. Bates,
Lucas County Prosecutor

MARVIN D. EVANS
Attorney for Summit County Prosecutor
Assistant Prosecuting Attorney
53 University Ave., 7th Floor
Akron, OH 44308-1680
mevans@prosecutor.summitoh.net

Counsel for Defendant-Appellee
Sherri Bevan Walsh,
Summit County Prosecutor

ALLYSON SLATER
Wilmer Cutler Pickering Hale
and Dorr LLP
60 State Street
Boston, MA 02109
allyson.slater@wilmerhale.com

B. JESSIE HILL
FREDA J. LEVENSON
REBECCA KENDIS
ACLU of Ohio Foundation
4506 Chester Ave.
Cleveland, OH 44103
bjh11@cwru.edu
flevenson@acluohio.org
rebecca.kendis@case.edu

MEAGAN BURROWS
American Civil Liberties Union
125 Broad St., 18th Fl.
New York, NY, 10004
mburrows@aclu.org

MELISSA COHEN
Planned Parenthood Federation
of America
123 William Street, Floor 9
New York, NY 10038
Melissa.cohen@ppfa.org

Counsel for Plaintiffs-Appellees
Preterm-Cleveland, et al.

DAVE YOST
Ohio Attorney General

BENJAMIN M. FLOWERS
Solicitor General
STEPHEN P. CARNEY
MATHURA J. SRIDHARAN

MATTHEW T. FITZSIMMONS
KELLI K. PERK
Assistant Prosecuting Attorney
8th Floor Justice Center
1200 Ontario Street
Cleveland, Ohio 44113
mfitzsimmons@
prosecutor.cuyahogacounty.us
kperk@
prosecutor.cuyahogacounty.us

Counsel for Defendant-Appellee
Michael C. O'Malley,
Cuyahoga County Prosecutor

JEANINE A. HUMMER
AMY L. HIERS
Assistant Prosecuting Attorneys,
373 S. High Street, 14th Floor
Columbus, OH 43215
jhummer@franklincountyohio.gov
ahiers@franklincountyohio.gov

Counsel for Defendant-Appellee
G. Gary Tyack,
Franklin County Prosecutor

WARD C. BARRENTINE
Assistant Prosecuting Attorney
301 West Third Street
PO Box 972
Dayton, OH 45422
wardb@mcohio.org

Counsel for Defendant-Appellee
Mat Heck, Jr.,
Montgomery County Prosecutor

Deputy Solicitors General
AMANDA L. NAROG
ANDREW D. MCCARTNEY
Assistant Attorneys General
30 East Broad Street, 17th Floor
Columbus, Ohio 43215
614-466-8980; 614-466-5087 fax
benjamin.flowers@ohioago.gov
stephen.carney@ohioago.gov
mathura.sridharan@ohioago.gov
amanda.narog@ohioago.gov
andrew.mccartney@ohioago.gov

Counsel for Defendants-Appellants
Attorney General Dave Yost, Director
Bruce Vanderhoff, Kim Rothermel, and
Bruce Saferin

Additionally, a copy of the foregoing Merit Brief of the States of Mississippi, Alabama, Arkansas, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Missouri, Montana, Nebraska, South Carolina, South Dakota, Texas, Utah, and West Virginia as Amici Curiae in Support of Appellants was served by U.S. mail this 8th day of May, 2023, on the following:

MELISSA A. POWERS
Hamilton County Prosecutor
230 E. Ninth Street, Suite 4000
Cincinnati, OH 45202

Defendant-Appellee

/s/ *Justin L. Matheny*
Justin L. Matheny
Deputy Solicitor General